

EXHIBIT A

k4o2CarH

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 CARNEGIE INSTITUTION OF
WASHINGTON and M7D
CORPORATION,

5 Plaintiffs,

New York, N.Y.

6 v.

20 Civ. 189 (JSR)

7 PURE GROWN DIAMONDS, INC., and
8 IIA TECHNOLOGIES PTE., LTD.,

9 Defendants.
10 -----x

11 CARNEGIE INSTITUTION OF
WASHINGTON and M7D
CORPORATION,

12 Plaintiffs,

13 v.

20 Civ. 200 (JSR)

14 FENIX DIAMONDS LLC,

15 Defendant.
16 -----x

Teleconference

17 Markman Hearing
18 Motion to Dismiss

19
20 April 24, 2020
21 10:05 a.m.

22 Before:

23 HON. JED S. RAKOFF,

24 District Judge
25

k4o2CarH

APPEARANCES

PERKINS COIE, LLP
Attorneys for Plaintiffs
BY: TERRENCE WIKBERG
MATTHEW J. MOFFA
AMY E. SIMPSON

FINNEGAN HENDERSON FARABOW GARRETT & DUNNER LLP
Attorneys for Defendants Pure Grown Diamonds, Inc.,
and IIA Technologies Pte., Ltd.
BY: PARMANAND K. SHARMA

GIBBONS, P.C.
Attorneys for Defendants Pure Grown Diamonds, Inc.
and IIA Technologies Pte., Ltd.
BY: JOSEPH P. LONG
JONATHAN BRUGH LOWER

LEYDIG VOIT & MAYER LTD
Attorneys for Defendant Fenix Diamonds LLC
BY: STEVEN H. SKLAR
MAXWELL SNOW
DAVID M. AIRAN

BRYAN CAVE LLP
Attorneys for Defendant Fenix Diamonds LLC
BY: DANIEL P. WAXMAN

ALSO PRESENT:

KYLE VICTOR, Law Clerk to the Hon. Jed S. Rakoff

k4o2CarH

1 MR. WIKBERG: Thank you, Matt. Thank you, your Honor.
2 This is Terry Wikberg again from Perkins Coie.

3 Before I start, Fenix's counsel made some comments
4 regarding prefiling investigation and a basis for bringing the
5 case, and these are things I take very seriously. I assure the
6 court that an appropriate investigation was done and we have a
7 basis to believe that all parties involved, all defendants are
8 practicing claims in the patent. I mean, their
9 representations -- at least Fenix's representations regarding
10 noninfringement are a little telling considering their claim
11 construction positions.

12 I also want to respond to a comment that Fenix's
13 counsel made regarding not manufacturing. In footnote 18 of
14 our complaint, we cite to Fenix's website, FenixDiamonds.com,
15 and specifically "\about," which is about the company. On this
16 website it says the following: "From our factory to a jewelry
17 store near you, Fenix opens a window to the future of
18 diamonds."

19 It also says they have pipeline integrity, full
20 transparency, suggesting that, with pipeline integrity they
21 supply their own.

22 It also says, a bullet point below that, their own
23 laboratories, no exposure to market volatility.

24 So it is statements like this where we rely -- that we
25 rely for the basis of saying that they are at least

k4o2CarH

1 manufacturing. If that turns out to be incorrect and their
2 information they are providing to the public is incorrect, so
3 be it, but we had a basis to make the allegations that we made.
4 Of course it is a little irrelevant as they are also selling,
5 which is also an infringement in this case, but I wanted to
6 point that out because --

7 THE COURT: Let me ask you this: Are you saying that
8 your patents cover essentially all artificially grown
9 diamonds?

10 MR. WIKBERG: Absolutely not, your Honor. That is a
11 statement made by both Pure Grown and Fenix in their papers
12 that we have accused a CVD diamond or CVD diamonds. Absolutely
13 not. The complaint makes it very clear, we are describing
14 their process as they -- to the extent they have disclosed
15 public information, we have relied on that in the complaint as
16 a basis to identify their process. A complaint is to provide
17 notice of the -- what is infringing, to provide fair notice to
18 the defendant. That is exactly what we have done. We didn't
19 say you sell CVD diamonds and therefore you infringe. We
20 say --

21 THE COURT: Well, but as I understood the argument
22 being made by your colleague and also some of the arguments
23 that were raised earlier in the *Markman* hearing, the argument
24 was: We have developed a particular process, a particular
25 method, a particular invention for developing MPCVD lab-grown

k4o2CarH

1 and annealed diamonds, there could be other processes and other
2 ways of getting at this, but we have patented our particular
3 inventive way. So if that is what your patents cover, then
4 presumably you need -- to bring a complaint, you need to have
5 some particularized allegations that the defendants are
6 utilizing those particular methods --

7 MR. WIKBERG: Well, the -- I'm sorry.

8 THE COURT: -- and I don't see that in the complaint
9 on a quick read.

10 MR. WIKBERG: Well, your Honor, those allegations are
11 present. If you look at the slide Fenix pulled up, I can't
12 recall what number, but we allege on information and belief
13 each and every of the claim elements to be present.

14 Now, there were certain discussions earlier about CVD
15 diamonds being identical in all respects to natural diamonds,
16 and for most things that is correct. However, CVD diamonds do
17 exhibit very particular attributes when looked at under certain
18 scientific methodology, for example, spectro -- I'm messing up
19 the word spectroscopy. And with that information -- and now I
20 am dancing a line of disclosing work product and otherwise
21 privileged information, but there is information that suggests
22 strongly, certainly sufficient enough to bring a complaint,
23 that the products manufactured and marketed and sold by the
24 defendants infringe the asserted claims.

25 Now, there are many other CVD kind of manufacturers in

k4o2CarH

1 you my *Markman* decision by no later than a week after that, May
2 8. So those are the deadlines I am setting myself. I just
3 want to make you aware of them.

4 Is there anything else we need to take up today?

5 COUNSEL: No, your Honor.

6 MR. WIKBERG: Your Honor, this is Terry Wikberg from
7 Perkins Coie, for plaintiffs. We have nothing further except
8 that it has been a fantastic challenge under current events to
9 prosecute this case so far, and we sincerely thank you and your
10 staff for allowing us to have this argument today under these
11 circumstances.

12 THE COURT: So, well, yeah, here in New York it is a
13 rather cloudy day. This has brought a little excitement in my
14 otherwise dull life.

15 All right. Thanks again, and I will sign off then.
16 Bye-bye.

17 COUNSEL: Thank you, your Honor.

18 oOo
19
20
21
22
23
24
25